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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THOMAS CARSON,

Petitioner,

v.

THE SUPERIOR COURT OF DEL  
NORTE COUNTY,

Respondent;

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Real Party in Interest.

A108761

(Del Norte County  
Super. Ct. No. CRF 04-9183)

Petitioner seeks a peremptory writ of mandate directing respondent superior court to issue a certificate of probable cause. We find the relief petitioner seeks is warranted under the circumstances of this case.

**BACKGROUND**

Police reports provided by petitioner state that on February 21, 2004,<sup>1</sup> the county sheriff's department received complaints that a man was firing a gun at a

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<sup>1</sup> The record before us consists of documents submitted in support of the petition and the clerk's and reporter's transcripts from the trial court proceedings. Those transcripts were prepared when petitioner filed a notice of appeal concurrently with his request for a certificate of probable cause. The transcripts were filed in

mobile home park in Klamath. When sheriff's deputies and a park ranger arrived on the scene, they came under fire; petitioner was shooting a .22 caliber rifle from his trailer. After attempts to negotiate a surrender failed, the deputies and the ranger returned fire. Petitioner eventually surrendered after suffering gunshot wounds to the abdomen and chest.

At some point before petitioner surrendered, the deputies discovered Daniel Sartuche, another resident of the mobile home park, lying dead near his porch. It was readily apparent the shots that killed Sartuche had come from petitioner's trailer.

Petitioner was charged with one count of first degree murder (Pen. Code, § 187), five counts of attempted murder (§§ 664, 187), and possession of a firearm by an ex-felon (§ 12021).

Petitioner waived a preliminary hearing and then pled guilty to all the charges in the information. But before sentencing (and after reading the probation report), petitioner moved to withdraw his plea, claiming he did not understand he could receive a sentence of more than 25 years to life. The trial court denied the motion. The court then sentenced petitioner to state prison for 326 years to life.

Petitioner filed a notice of appeal and applied for a certificate of probable cause (Pen. Code, § 1237.5). The trial court denied the application. Petitioner later renewed his application for a certificate of probable cause, but apparently the trial court did not act upon it within the time provided by the Rules of Court (Cal. Rules of Court, rule 30(b)(2)).

The instant petition for extraordinary relief followed, and this court asked for opposition from the People. We also notified the parties we were considering issuing a peremptory writ in the first instance. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.) We conclude the issuance of a

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this court under appeal no. A107876. We take judicial notice of the transcripts in this proceeding (A108761) on our own motion.

peremptory writ is appropriate, as the applicable principles of law are well established and resolution of this matter does not require us to consider any factual questions. (See *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1259-1260.)

### **DISCUSSION**

If the defendant “presents any cognizable issue for appeal which is *not clearly* frivolous and vexatious, the trial court abuses its discretion if it fails to issue a certificate of probable cause.” (*People v. Holland* (1978) 23 Cal.3d 77, 84, overruled on another point in *People v. Mendez* (1999) 19 Cal.4th 1084, 1097-1098.)

The issues petitioner seeks to raise on appeal, other than sentencing error, go to the validity of his plea and the denial of his motion to withdraw his plea. Penal Code section 1018 provides that a guilty plea may be withdrawn before judgment upon a showing of good cause. Good cause includes mistake, ignorance, inadvertence, fraud, or duress. (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1208.)

We cannot say the trial court abused its discretion in refusing to grant petitioner’s first application for a certificate of probable cause. That application asserted petitioner believed his sentence would be 25 years to life, and that he was confused due to chronic pain (from his gun shot wounds), pain medication, and mental illness. The trial court had previously rejected this claim, after an evidentiary hearing, in connection with the motion to withdraw the plea. We also see no merit to that claim.

In petitioner’s renewed application for a certificate of probable cause, which was prepared by new counsel, petitioner stated, inter alia, that he was not properly advised as to the consequences of his plea.<sup>2</sup> The plea transcript does

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<sup>2</sup> As previously noted, the trial court did not act on the renewed application. There is no copy of the application in the clerk’s transcript. There appears to be no dispute, however, that the petition was filed in the trial court.

appear to show that the trial court, the prosecutor and defense counsel all apparently labored under the mistaken impression that life without the possibility of parole was a potential sentence even though no special circumstances were alleged in the information. (See Pen. Code, §§ 190, subd. (a); 190.2; 190.3.)

Whether there is a reasonable explanation for the plea colloquy, or whether any mistake during the plea colloquy constitutes good cause for withdrawing the plea remains to be determined. It suffices at this juncture to say that petitioner has raised an issue that is not “clearly frivolous and vexatious.” A certificate of probable cause should issue.

### **DISPOSITION**

Let a peremptory writ of mandate issue directing the respondent superior court to vacate its order of September 9, 2004, denying petitioner’s application for certificate of probable cause. Respondent shall issue a new order granting the application.

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Kay, P.J.

We concur:

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Reardon, J.

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Sepulveda, J.